IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGICAL CIVIL JURISDICTION.

WRIT PETITION NO. 2985 OF 2004

M/s. Motorland ..... Petitioners.

versus

Madan Kumar Beira & anr. ..... Respondents.

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Mr. V.P. Vaidya for petitioner.
Mr. R.S. Upadhyay for respondent no.1.

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CORAM ; F.I. REBELLO, J.

DATED; 14TH DECEMBER, 2004.

P.C.;

1. Rule. Respondent waives service.

2. The respondent had filed a complaint against the petitioner initially under item no.9 of Schedule IV of the MRTP Act. The complaint was amended in June 2001 by invoking item 5 of Schedule IV. The case of the respondent was that he was in the employment of the petitioner. A settlement had been entered into between the petitioner and the union dated 30-10-1997 under which the petitioner had granted benefits to the workmen. As the Respondent was not the member of the union while signing the settlement, the petitioner did

not extend the benefit under settlement to the Respondent. The complaint was filed in July 1998.

3. During the pendency of the complaint another settlement came to be entered into on 30-4-2001 in the matter of closure, whereby the petitioner and the union agreed to the payment of closure compensation. The petitioner was also not paid the compensation in terms of the said settlement. The Respondent thereafter filed the complaint originally under item 9 and thereafter invoked item 5 of Schedule IV.

4. On consideration of the pleadings and the evidence led by the parties, the learned Industrial court held that the petitioner herein had committed unfair labour practice under item 9 of Schedule IV of the MRTP Act and directed the petitioner to desist from continuing the same. Further consequential directions were also issued. This order is the subject matter of the present petition.

5. At the hearing of this petition on behalf of the petitioner the learned counsel contended that settlements entered into, were settlement under section 18(I) of the Industrial Disputes Act 1947. Under the settlement only members of the union were given

benefits. It is therefore submitted that the respondent would not be entitled to the benefit. It is contended that it is admitted on the evidence before Industrial court that Respondent was a member of another union. It is submitted that it was within the competence of the union to enter into the settlement on behalf of its members. It is therefore submitted that the findings by the Industrial court disclosses an error of law apparent on the face of the record. In so far as item 5 is concerned, it is submitted that the issue has not been considered at all.

6. On the other hand on behalf of the respondent workmen the learned counsel contends that once there was a settlement whose benefit have been extended in favour of other workmen, failure to do so would attract item no.5 and even otherwise the petitioner management could not grant the benefits to one section of the workmen and deny the same to another.

7. Having heard the learned counsel and after perusing the order it is clear that the learned indistrual court did not at all address itself to the issue of item 5 which has been invoked by the respondent workmen pursuant to the amendment of the complaint. Even in so far as the findings in respect of item 9 of Schedule

IV, it appears that the learned industrial court did not address such issues as to whether the settlement entered into by the union on behalf of its members the benefits could be extended to the Respondent workman.

8. Considering the above, in my opinion, the impunged order will have to be set aside and the matter will have to be remanded back to the industrial court for re-hearing the matter and to dispose of the same in accordance with the law, after giving an opportunity to the parties to lead additional evidence if they so desire. The complaint is of the year 1990. The Industrial court is directed to dispose of the complaint at any rate within four months from today.

9. Rule made absolute accordingly. There shall be no order as to costs.

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